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16 UNITED STATES DISTRICT COURT
17 CENTRAL DISTRICT OF CALIFORNIA

18 ALMA HARO, individually, and on
19 behalf of other members of the general
20 public similarly situated, and as aggrieved
employees pursuant to the Private
Attorneys General Act ("PAGA"),

21 Plaintiff,

22 vs.

23 LABORATORY CORPORATION OF
24 AMERICA, a Delaware Corporation; and
DOES 1 through 100, inclusive,

25 Defendants.
26

Case No. 2:18-cv-09091-AB-RAO

**STIPULATED PROTECTIVE
ORDER¹**

27 ¹ This Stipulated Protective Order is substantially based on the model protective order
28 provided under Magistrate Judge Rozella A. Oliver's Procedures.

1 A. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential,
3 proprietary or private information for which special protection from public disclosure
4 and from use for any purpose other than prosecuting this litigation may be warranted.
5 Accordingly, the parties hereby stipulate to and petition the Court to enter the
6 following Stipulated Protective Order. The parties acknowledge that this Order does
7 not confer blanket protections on all disclosures or responses to discovery and that the
8 protection it affords from public disclosure and use extends only to the limited
9 information or items that are entitled to confidential treatment under the applicable
10 legal principles.

11 B. GOOD CAUSE STATEMENT

12 This action is likely to involve private third-party information of non-percipient
13 witness employees and other individuals, trade secrets, customer and pricing lists and
14 other valuable research, development, commercial, financial, technical and/or
15 proprietary information for which special protection from public disclosure and from
16 use for any purpose other than prosecution of this action is warranted. Such
17 confidential and proprietary materials and information consist of, among other things,
18 confidential business or financial information, information regarding confidential
19 business practices, or other confidential research, development, or commercial
20 information (including information implicating privacy rights of third parties),
21 information otherwise generally unavailable to the public, or which may be privileged
22 or otherwise protected from disclosure under state or federal statutes, court rules, case
23 decisions, or common law. Accordingly, to expedite the flow of information, to
24 facilitate the prompt resolution of disputes over confidentiality of discovery materials,
25 to adequately protect information the parties are entitled to keep confidential, to ensure
26 that the parties are permitted reasonable necessary uses of such material in preparation
27 for and in the conduct of trial, to address their handling at the end of the litigation, and
28 serve the ends of justice, a protective order for such information is justified in this

1 matter. It is the intent of the parties that information will not be designated as
2 confidential for tactical reasons and that nothing be so designated without a good faith
3 belief that it has been maintained in a confidential, non-public manner, and there is
4 good cause why it should not be part of the public record of this case.

5 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER SEAL

6 The parties further acknowledge, as set forth in Section 12.3, below, that this
7 Stipulated Protective Order does not entitle them to file confidential information under
8 seal; Local Civil Rule 79-5 sets forth the procedures that must be followed and the
9 standards that will be applied when a party seeks permission from the court to file
10 material under seal.

11 There is a strong presumption that the public has a right of access to judicial
12 proceedings and records in civil cases. In connection with non-dispositive motions,
13 good cause must be shown to support a filing under seal. *See Kamakana v. City and*
14 *County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v. Gen. Motors*
15 *Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v. Sony Electronics, Inc.*,
16 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders require good
17 cause showing), and a specific showing of good cause or compelling reasons with
18 proper evidentiary support and legal justification, must be made with respect to
19 Protected Material that a party seeks to file under seal. The parties' mere designation
20 of Disclosure or Discovery Material as CONFIDENTIAL does not—without the
21 submission of competent evidence by declaration, establishing that the material sought
22 to be filed under seal qualifies as confidential, privileged, or otherwise protectable—
23 constitute good cause.

24 Further, if a party requests sealing related to a dispositive motion or trial, then
25 compelling reasons, not only good cause, for the sealing must be shown, and the relief
26 sought shall be narrowly tailored to serve the specific interest to be protected. *See*
27 *Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th Cir. 2010). For each item
28 or type of information, document, or thing sought to be filed or introduced under seal

1 in connection with a dispositive motion or trial, the party seeking protection must
2 articulate compelling reasons, supported by specific facts and legal justification, for the
3 requested sealing order. Again, competent evidence supporting the application to file
4 documents under seal must be provided by declaration.

5 Any document that is not confidential, privileged, or otherwise protectable in its
6 entirety will not be filed under seal if the confidential portions can be redacted. If
7 documents can be redacted, then a redacted version for public viewing, omitting only
8 the confidential, privileged, or otherwise protectable portions of the document, shall be
9 filed. Any application that seeks to file documents under seal in their entirety should
10 include an explanation of why redaction is not feasible.

11 2. DEFINITIONS

12 2.1 Action: *Alma Haro v. Laboratory Corporation of America*, Case No.
13 2:18-cv-09091-AB-RAO.

14 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
15 information or items under this Order.

16 2.3 "CONFIDENTIAL" Information or Items: information (regardless of how
17 it is generated, stored or maintained) or tangible things that qualify for protection
18 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
19 Statement.

20 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
21 support staff).

22 2.5 Designating Party: a Party or Non-Party that designates information or
23 items that it produces in disclosures or in responses to discovery as
24 "CONFIDENTIAL."

25 2.6 Disclosure or Discovery Material: all items or information, regardless of
26 the medium or manner in which it is generated, stored, or maintained (including,
27 among other things, testimony, transcripts, and tangible things), that are produced or
28 generated in disclosures or responses to discovery in this matter.

1 2.7 Expert: a person with specialized knowledge or experience in a matter
2 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
3 expert witness or as a consultant in this Action.

4 2.8 House Counsel: attorneys who are employees of a party to this Action.
5 House Counsel does not include Outside Counsel of Record or any other outside
6 counsel.

7 2.9 Non-Party: any natural person, partnership, corporation, association or
8 other legal entity not named as a Party to this action.

9 2.10 Outside Counsel of Record: attorneys who are not employees of a party to
10 this Action but are retained to represent or advise a party to this Action and have
11 appeared in this Action on behalf of that party or are affiliated with a law firm that has
12 appeared on behalf of that party, and includes support staff.

13 2.11 Party: any party to this Action, including all of its officers, directors,
14 employees, consultants, retained experts, and Outside Counsel of Record (and their
15 support staffs).

16 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
17 Discovery Material in this Action.

18 2.13 Professional Vendors: persons or entities that provide litigation support
19 services (e.g., photocopying, videotaping, translating, preparing exhibits or
20 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
21 their employees and sub contractors.

22 2.14 Protected Material: any Disclosure or Discovery Material that is
23 designated as "CONFIDENTIAL."

24 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
25 from a Producing Party.

26 3. SCOPE

27 The protections conferred by this Stipulation and Order cover not only Protected
28 Material (as defined above), but also (1) any information copied or extracted from

1 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
2 Material; and (3) any testimony, conversations, or presentations by Parties or their
3 Counsel that might reveal Protected Material.

4 Any use of Protected Material at trial shall be governed by the orders of the trial
5 judge. This Order does not govern the use of Protected Material at trial.

6 4. DURATION

7 Once a case proceeds to trial, information that was designated as
8 CONFIDENTIAL or maintained pursuant to this protective order used or introduced as
9 an exhibit at trial becomes public and will be presumptively available to all members
10 of the public, including the press, unless compelling reasons supported by specific
11 factual findings to proceed otherwise are made to the trial judge in advance of the trial.
12 *See Kamakana*, 447 F.3d at 1180-81 (distinguishing “good cause” showing for sealing
13 documents produced in discovery from “compelling reasons” standard when merits-
14 related documents are part of court record). Accordingly, the terms of this protective
15 order do not extend beyond the commencement of the trial.

16 5. DESIGNATING PROTECTED MATERIAL

17 5.1 Exercise of Restraint and Care in Designating Material for Protection.

18 Each Party or Non-Party that designates information or items for protection
19 under this Order must take care to limit any such designation to specific material that
20 qualifies under the appropriate standards. The Designating Party must designate for
21 protection only those parts of material, documents, items or oral or written
22 communications that qualify so that other portions of the material, documents, items or
23 communications for which protection is not warranted are not swept unjustifiably
24 within the ambit of this Order.

25 Mass, indiscriminate or routinized designations are prohibited. Designations that
26 are shown to be clearly unjustified or that have been made for an improper purpose
27 (e.g., to unnecessarily encumber the case development process or to impose
28 unnecessary expenses and burdens on other parties) may expose the Designating Party

1 to sanctions.

2 If it comes to a Designating Party's attention that information or items that it
3 designated for protection do not qualify for protection, that Designating Party must
4 promptly notify all other Parties that it is withdrawing the inapplicable designation.

5 5.2 Manner and Timing of Designations. Except as otherwise provided in this
6 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated
7 or ordered, Disclosure or Discovery Material that qualifies for protection under this
8 Order must be clearly so designated before the material is disclosed or produced.

9 Designation in conformity with this Order requires:

10 (a) for information in documentary form (e.g., paper or electronic
11 documents, but excluding transcripts of depositions or other pretrial or trial
12 proceedings), that the Producing Party affix at a minimum, the legend
13 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
14 contains protected material. If only a portion of the material on a page qualifies for
15 protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,
16 by making appropriate markings in the margins).

17 A Party or Non-Party that makes original documents available for inspection
18 need not designate them for protection until after the inspecting Party has indicated
19 which documents it would like copied and produced. During the inspection and before
20 the designation, all of the material made available for inspection shall be deemed
21 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants
22 copied and produced, the Producing Party must determine which documents, or
23 portions thereof, qualify for protection under this Order. Then, before producing the
24 specified documents, the Producing Party must affix the "CONFIDENTIAL legend" to
25 each page that contains Protected Material. If only a portion of the material on a page
26 qualifies for protection, the Producing Party also must clearly identify the protected
27 portion(s) (e.g., by making appropriate markings in the margins).

1 (b) for testimony given in depositions that the Designating Party
2 identifies the Disclosure or Discovery Material on the record, before the close of the
3 deposition all protected testimony.

4 (c) for information produced in some form other than documentary and
5 for any other tangible items, that the Producing Party affix in a prominent place on the
6 exterior of the container or containers in which the information is stored the legend
7 "CONFIDENTIAL." If only a portion or portions of the information warrants
8 protection, the Producing Party, to the extent practicable, shall identify the protected
9 portion(s).

10 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
11 failure to designate qualified information or items does not, standing alone, waive the
12 Designating Party's right to secure protection under this Order for such material. Upon
13 timely correction of a designation, the Receiving Party must make reasonable efforts to
14 assure that the material is treated in accordance with the provisions of this Order.

15 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

16 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
17 designation of confidentiality at any time that is consistent with the Court's Scheduling
18 Order.

19 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
20 resolution process under Local Rule 37.1 et seq.

21 6.3 The burden of persuasion in any such challenge proceeding shall be on the
22 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,
23 to harass or impose unnecessary expenses and burdens on other parties) may expose
24 the Challenging Party to sanctions. Unless the Designating Party has waived or
25 withdrawn the confidentiality designation, all parties shall continue to afford the
26 material in question the level of protection to which it is entitled under the Producing
27 Party's designation until the Court rules on the challenge.

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1 7. ACCESS TO AND USE OF PROTECTED MATERIAL

2 7.1 Basic Principles. A Receiving Party may use Protected Material that is
3 disclosed or produced by another Party or by a Non-Party in connection with this
4 Action only for prosecuting, defending or attempting to settle this Action. Such
5 Protected Material may be disclosed only to the categories of persons and under the
6 conditions described in this Order. When the Action has been terminated, a Receiving
7 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).
8 Protected Material must be stored and maintained by a Receiving Party at a location
9 and in a secure manner that ensures that access is limited to the persons authorized
10 under this Order.

11 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
12 ordered by the court or permitted in writing by the Designating Party, a Receiving
13 Party may disclose any information or item designated "CONFIDENTIAL" only to:

14 (a) the Receiving Party's Outside Counsel of Record in this Action, as
15 well as employees of said Outside Counsel of Record to whom it is reasonably
16 necessary to disclose the information for this Action;

17 (b) the officers, directors, and employees (including House Counsel) of
18 the Receiving Party to whom disclosure is reasonably necessary for this Action;

19 (c) Experts (as defined in this Order) of the Receiving Party to whom
20 disclosure is reasonably necessary for this Action and who have signed the
21 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

22 (d) the court and its personnel;

23 (e) court reporters and their staff;

24 (f) professional jury or trial consultants, mock jurors, and Professional
25 Vendors to whom disclosure is reasonably necessary for this Action and who have
26 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

27 (g) the author or recipient of a document containing the information or a
28 custodian or other person who otherwise possessed or knew the information;

1 (h) during their depositions, witnesses, and attorneys for witnesses, in the
2 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
3 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will
4 not be permitted to keep any confidential information unless they sign the
5 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed
6 by the Designating Party or ordered by the court. Pages of transcribed deposition
7 testimony or exhibits to depositions that reveal Protected Material may be separately
8 bound by the court reporter and may not be disclosed to anyone except as permitted
9 under this Stipulated Protective Order; and

10 (i) any mediator or settlement officer, and their supporting personnel,
11 mutually agreed upon by any of the parties engaged in settlement discussions.

12 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
13 OTHER LITIGATION

14 If a Party is served with a subpoena or a court order issued in other litigation that
15 compels disclosure of any information or items designated in this Action as
16 “CONFIDENTIAL,” that Party must:

17 (a) promptly notify in writing the Designating Party. Such notification
18 shall include a copy of the subpoena or court order;

19 (b) promptly notify in writing the party who caused the subpoena or order
20 to issue in the other litigation that some or all of the material covered by the subpoena
21 or order is subject to this Protective Order. Such notification shall include a copy of
22 this Stipulated Protective Order; and

23 (c) cooperate with respect to all reasonable procedures sought to be
24 pursued by the Designating Party whose Protected Material may be affected.

25 If the Designating Party timely seeks a protective order, the Party served with
26 the subpoena or court order shall not produce any information designated in this action
27 as “CONFIDENTIAL” before a determination by the court from which the subpoena
28 or order issued, unless the Party has obtained the Designating Party’s permission. The

1 Designating Party shall bear the burden and expense of seeking protection in that court
2 of its confidential material and nothing in these provisions should be construed as
3 authorizing or encouraging a Receiving Party in this Action to disobey a lawful
4 directive from another court.

5 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
6 IN THIS LITIGATION

7 (a) The terms of this Order are applicable to information produced by a
8 Non-Party in this Action and designated as "CONFIDENTIAL." Such information
9 produced by Non-Parties in connection with this litigation is protected by the remedies
10 and relief provided by this Order. Nothing in these provisions should be construed as
11 prohibiting a Non-Party from seeking additional protections.

12 (b) In the event that a Party is required, by a valid discovery request, to
13 produce a Non-Party's confidential information in its possession, and the Party is
14 subject to an agreement with the Non-Party not to produce the Non-Party's
15 confidential information, then the Party shall:

16 (1) promptly notify in writing the Requesting Party and the Non-
17 Party that some or all of the information requested is subject to a confidentiality
18 agreement with a Non-Party;

19 (2) promptly provide the Non-Party with a copy of the Stipulated
20 Protective Order in this Action, the relevant discovery request(s), and a reasonably
21 specific description of the information requested; and

22 (3) make the information requested available for inspection by the
23 Non-Party, if requested.

24 (c) If the Non-Party fails to seek a protective order from this court within
25 14 days of receiving the notice and accompanying information, the Receiving Party
26 may produce the Non-Party's confidential information responsive to the discovery
27 request. If the Non-Party timely seeks a protective order, the Receiving Party shall not
28 produce any information in its possession or control that is subject to the

1 confidentiality agreement with the Non-Party before a determination by the court.
2 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
3 of seeking protection in this court of its Protected Material.

4 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

5 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
6 Protected Material to any person or in any circumstance not authorized under this
7 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
8 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
9 all unauthorized copies of the Protected Material, (c) inform the person or persons to
10 whom unauthorized disclosures were made of all the terms of this Order, and (d)
11 request such person or persons to execute the "Acknowledgment and Agreement to Be
12 Bound" that is attached hereto as Exhibit A.

13 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
14 PROTECTED MATERIAL

15 When a Producing Party gives notice to Receiving Parties that certain
16 inadvertently produced material is subject to a claim of privilege or other protection,
17 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
18 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
19 may be established in an e-discovery order that provides for production without prior
20 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
21 parties reach an agreement on the effect of disclosure of a communication or
22 information covered by the attorney-client privilege or work product protection, the
23 parties may incorporate their agreement in the stipulated protective order submitted to
24 the court.

25 12. MISCELLANEOUS

26 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
27 person to seek its modification by the Court in the future.

28 ///

1 12.2 Right to Assert Other Objections. By stipulating to the entry of this
2 Protective Order, no Party waives any right it otherwise would have to object to
3 disclosing or producing any information or item on any ground not addressed in this
4 Stipulated Protective Order. Similarly, no Party waives any right to object on any
5 ground to use in evidence of any of the material covered by this Protective Order.

6 12.3 Filing Protected Material. A Party that seeks to file under seal any
7 Protected Material must comply with Local Civil Rule 79-5. Protected Material may
8 only be filed under seal pursuant to a court order authorizing the sealing of the specific
9 Protected Material at issue. If a Party's request to file Protected Material under seal is
10 denied by the court, then the Receiving Party may file the information in the public
11 record unless otherwise instructed by the court.

12 13. FINAL DISPOSITION

13 After the final disposition of this Action, as defined in paragraph 4, within 60
14 days of a written request by the Designating Party, each Receiving Party must return
15 all Protected Material to the Producing Party or destroy such material. As used in this
16 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
17 summaries, and any other format reproducing or capturing any of the Protected
18 Material. Whether the Protected Material is returned or destroyed, the Receiving Party
19 must submit a written certification to the Producing Party (and, if not the same person
20 or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
21 category, where appropriate) all the Protected Material that was returned or destroyed
22 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
23 compilations, summaries or any other format reproducing or capturing any of the
24 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
25 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
26 legal memoranda, correspondence, deposition and trial exhibits, expert reports,
27 attorney work product, and consultant and expert work product, even if such materials
28 contain Protected Material. Any such archival copies that contain or constitute

1 Protected Material remain subject to this Protective Order as set forth in Section 4
2 (DURATION).

3 14. VIOLATION

4 Any violation of this Order may be punished by appropriate measures including,
5 without limitation, contempt proceedings and/or monetary sanctions.

6
7 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

8
9 Dated: June 6, 2019

THE BAINER LAW FIRM

10
11 By: 

Matthew R. Bainer
Attorneys for Plaintiff
ALMA HARO

12
13 Dated: June 6, 2019

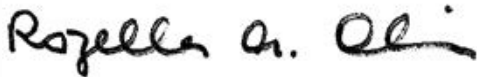
NIXON PEABODY LLP

14
15 By: 

Benjamin J. Kim
Andrea Chavez
Attorneys for Defendant
LABORATORY CORPORATION OF
AMERICA

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20 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

21 Dated: June 7, 2019

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24 Honorable Rozella A. Oliver
25 United States Magistrate Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury that I
have read in its entirety and understand the Stipulated Protective Order that was issued
by the United States District Court for the Central District of California on
_____ [date] in the case of *Alma Haro v. Laboratory Corporation of*
America, Case No. 2:18-cv-09091-AB-RAO. I agree to comply with and to be bound
by all the terms of this Stipulated Protective Order and I understand and acknowledge
that failure to so comply could expose me to sanctions and punishment in the nature of
contempt. I solemnly promise that I will not disclose in any manner any information or
item that is subject to this Stipulated Protective Order to any person or entity except in
strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for
the Central District of California for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone
number] as my California agent for service of process in connection with this action or
any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____